

## **REMARKS**

Applicants respectfully request reconsideration of this application as amended. Claims 1, 10 and 21 have been amended to present the claims in better form for allowance and for possible consideration on appeal. Applicants respectfully request the Examiner to accept the proposed amendments. Claims 12-13, 17-20 and 24-26 have been cancelled without prejudice. No new claims have been added. Therefore, claims 1-11, 14-16 and 21-23 are now presented for examination.

### **35 U.S.C. § 112 Rejection**

Claims 1-11 and 14-26 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 1 and 21 have been amended to obviate this rejection. Accordingly, Applicants respectfully request that the rejection be withdrawn.

### **35 U.S.C. § 102(b) Rejection**

Claims 1, 3-4, 6, 9-13, 15-21 and 23-26 stand rejected under 35 U.S.C. §102(b) as being anticipated by Fee et al., U.S. Patent No. 5,522,042 (“Fee”).

Applicant submits that Fee discloses “allocating *the performance of applications in a networking chassis* among one or more modules in the chassis. In particular, the system acts as a chassis agent for *performing network management functions*. The agent performs a discovery function whereby each module discovers the location and current utilization of resources and applications for itself and transmits that information to other modules, and wherein each module maintains a slot table of such information for all

modules. Based on the information in the slot table, each module performs *an election function for allocating applications among the various modules in the chassis.*"

(Abstract, lines 1-12; emphasis provided).

In contrast, claim 1, in pertinent part, recites "storing replicated health and performance matrices in a database associated with the chassis; receiving an indication that the first server has failed, wherein the indication is based on the health matrices and performance matrices; [and] based on receiving the indication, electing a second server to replace the first server to act as the active manager server based on a predetermined criteria, wherein the second server resides in the chassis." (emphasis provided).

Applicants submit that nowhere does Fee teach or reasonably suggest the above-referenced limitations. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claim 1 and its dependent claims.

Claims 10 and 24 contain limitations similar to those of claims 1. Accordingly, Applicants respectfully request the withdrawal of the rejection of claims 10 and 24 their dependent claims.

### **35 U.S.C. § 103 Rejection**

Claims 2 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fee.

With regard to claims 2 and 22, they depend from independent claims 1 and 24 and thus, include the limitations of the independent claim from which they depend. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 2 and 22.

Claims 5 and 7-8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fee, and in view of Fung, U.S. Patent Application Publication 2002/0062454 (“Fung”).

With regard to claims 5 and 7-8, they depend from independent claim 1 and thus, include the limitations of claim 1. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 5 and 7-8.

### **Conclusion**

In light of the foregoing, reconsideration and allowance of the claims is hereby earnestly requested.

**Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

**Request for an Extension of Time**

Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

**Charge our Deposit Account**

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

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